REMARKS

The present application has been reviewed and amended in light of the Office Action mailed December 24, 2009. In particular, independent claims 1 and 2 have been amended to more clearly recite the structure of Applicant's disclosure. Applicant has made an earnest effort to place this application in condition for allowance, and respectfully requests reconsideration and allowance of the pending claims as currently amended.

Claim Rejections under 35 U.S.C. §102(b)

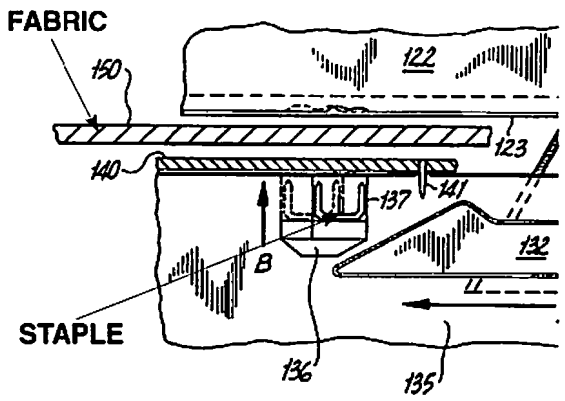
Claims 1-5 and 7 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,045,560 to McKean et al. (hereinafter McKean). Applicant respectfully traverses this rejection for at least the following reasons.

McKean teaches a surgical stapler wherein surgical fabric 140 is positioned adjacent or attached to a portion of the apparatus, such that, upon actuation of the stapler, both the fabric and a plurality of surgical staplers are applied to body tissue (McKean col. 1, lines 56-61). The surgical fabric is partially or completely disposed between an anvil assembly and a cartridge assembly of the stapler (McKean col. 3, lines 53-56), and may be woven, knit, or nonwoven. The surgical fabric may be formed from homopolymers, copolymers, blends obtained from one or more monomers selected from the group consisting of glycolide, glycolic acid, lactide, lactic acid, p-dioxanone, α-caprolactone and trimethylene carbonate, and polymers such as polyethylene, polypropylene, nylon, polyethylene terephthalate, polytetrafluoroethylene, polyvinylidene fluoride, and the like (McKean col. 4, lines 13-30).

According to MPEP §2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

McKean does not teach, either expressly or inherently, each and every limitation of Applicant's claims 1-5 and 7 as currently amended. The Examiner takes the position that the surgical fabric 140 of McKean encompasses a "capillary fixed to an external surface of at least one of the base leg or support leg having a reservoir defined therein for retaining a liquid" as required by Applicant's independent claims 1 and 2. This argument fails for at least the following reasons.

Claim 1 clearly requires a capillary as part of the surgical fastener. By contrast, McKean discloses surgical fabric to be used with surgical fasteners. The surgical fabric of McKean is disposed between an anvil assembly and a cartridge assembly. As understood, the McKean stapler operates by stapling through the fabric 140, which acts as a buttress when stapled to the underlying tissue. The fabric is separate from the staple 137 and held between the stapler jaws. Nowhere does McKean teach a "capillary fixed to an external surface of at least one of the base leg or support leg having a reservoir defined therein for retaining a liquid." This distinction is clearly seen in the comparison between McKean Fig. 7 and Applicant's Fig. 18b presented below. The McKean fabric 150 is separate and apart from the McKean staple 137, while Applicant's rupturable capillary 250 is "fixed to an external surface of at least one of the base leg or support leg."



McKean Fig. 7

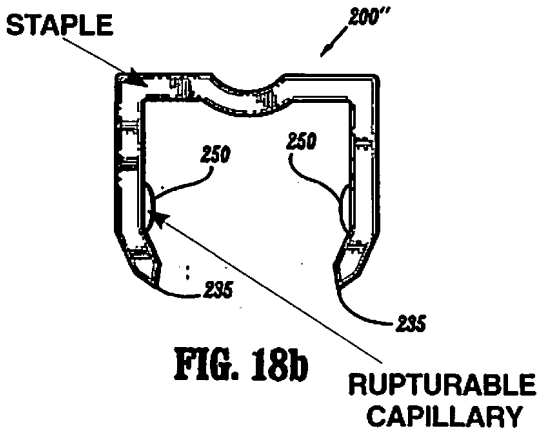


FIG. 18b

Applicant's Fig. 18b

The Examiner also relies upon McKean for the teaching of a liquid retained by the fabric. Applicant has conducted a diligent study of McKean, and respectfully submits that McKean lacks any teaching of a liquid retained by a fabric. The Examiner relies on McKean col. 4, lines 13-30 (recited above) and col. 5, line 4 for the alleged disclosure of a liquid retained by the fabric. These arguments also fail. McKean col. 4, lines 13-30 discloses a number of materials from which the fabric is formed. There is no disclosure or suggestion that any of these listed materials is a liquid or that any of these materials is somehow incorporated into the fabric. At most, McKean col. 5, line 4 lists a number of "surgically useful substances" which may be incorporated into the fabric. However, there is no disclosure or suggestion any of the recited substances is a liquid.

Applicant has faithfully demonstrated that McKean does not teach each and every element as set forth in Applicant's claims as currently amended, and is therefore not an anticipatory reference under 35 U.S.C. §102(b). Accordingly, Applicant respectfully

submits that claims 1-5 and 7 as previously presented are in condition for allowance, and that the rejection thereof under 35 U.S.C. §102(b) be withdrawn.

Claim Rejections under 35 U.S.C. §103(a)

Claims 6 and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over McKean in view of U.S. Patent No. 6,045,560 to Trumbull et al. (hereinafter Trumbull). Applicant respectfully traverses this rejection for at least the following reasons.

Claims 6 and 8 depend from independent claims 1 and 2. MPEP §2143.03 states that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. Since claims 1 and 2 as currently amended are patentable, claims 6 and 8 which depend therefrom are also patentable.

Further, the Examiner asserts that McKean discloses a "single liquid filled capillary on a base leg of a fastener" and relies upon Trumbull for an alleged teaching of a "fastener that sequentially ruptures a first and second capillary 52, such that the first and second capillary 52 are on an external surface of the base leg".

Trumbull teaches a method and apparatus to achieve hemostasis along a staple line by utilizing a pledget material positioned adjacent to at least one surface of the tissue. A pledget is a compress or small flat mass usually of gauze or absorbent cotton that is laid over a wound or into a cavity to apply medication, exclude air, retain dressings, or absorb the matter discharged.[1] Trumbull col. 3 lines 60-62 teach that "pledget material strips 52 are preferably made from an absorbent material that is absorbable within the

[1] *Merriam-Webster's Medical Dictionary*. Retrieved February 2, 2010, from Dictionary.com website: http://dictionary.reference.com/browse/pledget.

body." Trumbull col. 4 lines 1-3 teaches that "the pledget material is a sterile, absorbable, tightly woven fabric prepared by the controlled oxidation of regenerated fibers." Trumbull col. 1, lines 55-59 teaches that the line of staples is formed so as to extend through the tissue *and* the absorbable pledget material (emphasis added). When fired, the staples extend *through* the pledget material 52 (col. 4, lines 34-35.) Applicant respectfully submits that Trumbull contains no teaching or suggestion that the pledget material strips 52 as defined therein disclose a "capillary fixed to an external surface of at least one of the base leg or support leg having a reservoir defined therein for retaining a liquid" as recited in Applicant's independent claims 1 and 2.

For the reasons explained in detail above, and as shown in the comparison of McKean Fig. 7 to Applicant's Fig. 18b, McKean does not teach a "capillary fixed to an external surface of at least one of the base leg or support leg having a reservoir defined therein for retaining a liquid." Therefore, McKean is unavailable to cure the deficiencies of Trumbull. Accordingly, Applicant respectfully requests the rejection of claims 6 and 8 be withdrawn.

CONCLUSION

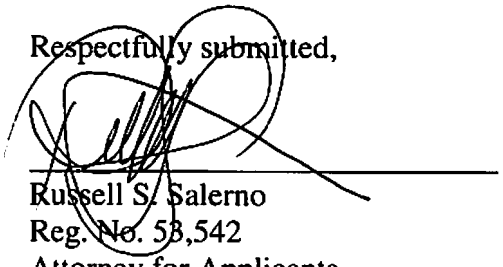
In light of the foregoing amendments and remarks, Applicant respectfully submits that independent claims 1-2 and dependent claims 3-8 as currently amended are patentably distinguishable over the cited references and the other references of record. Accordingly, early and favorable consideration of this application is earnestly requested.

Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, she is respectfully requested to contact Applicant's attorney at the number indicated below.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 21-0550.

Dated: March 23, 2010

Respectfully submitted,



Russell S. Salerno
Reg. No. 53,542
Attorney for Applicants

Correspondence address:
COVIDIEN
60 Middletown Avenue
North Haven, CT 06473
203-492-2000

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road, Suite 420
Melville, New York 11747
Tel.: (631) 501-5700
Fax: (631) 501-3526